Supreme Court, U.S.
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No. 05-275

IN THE
SUPREME COURT OF THE UNITED STATES

LEONARDO MANUEL LOPEZ,

Petitioner,

vs.

DOUG DRETKE, DIRECTOR,
Texas Department of Criminal
Justice-Institutional Division,

Respondent.

On Petition for Writ of Certiorari
To the United States Court of Appeals
For the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Should this Court grant the writ where the Fifth Circuit Court of Appeals, in denying a certificate of appealability, refused to review the District Court's decision on an important federal question decided in a way that conflicts with this Court's holding in **Artuz v. Bennett**, 531 U.S. 4 (2000) – regarding when a state post-conviction petition is "properly filed" under § 2244(d)(2)?

2. Should this Court grant the writ because the District Court and Fifth Circuit, in denying a certificate of appealability, erred in its resolution of the important issue that is in direct conflict with this Court's holding in ***Artuz***?

3. Should this Court grant the writ and review the District Court's and Fifth Circuit's denial of equitable tolling, which denies all federal habeas review to petitioners who act "appropriately", "reasonably" and "diligently", and as demanded by the exhaustion requirement in seeking state court remedies?

5. Should this Court grant the writ to resolve the conflict between the Fifth Circuit and the Ninth and Seventh Circuit Courts of Appeals in applying the relation back doctrine in habeas actions under Federal Rules of Civil Procedure 15(c)(2)?

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I. This Court should grant the writ where the Fifth Circuit Court of Appeals, in denying a certificate of appealability, refused to review the District Court's decision on an important federal question decided in a way that conflicts with this Court's holding in **Artuz v. Bennett**, 531 U.S. 4 (2000) – regarding when a state post-conviction petition is "properly filed" under § 2244(d)(2).	7
II. This Court should grant the writ because the District Court and Fifth Circuit, in	

denying a certificate of appealability, erred in its resolution of the important issue that is in direct conflict with this Court's holding in *Artuz*? 12

A. The District Court and Fifth Circuit defines "properly filed" in a way that was rejected by Artuz, and that is inconsistent with this Court's precedent regarding the importance of habeas corpus. 12

B. Under Artuz' analysis, a State petition that is ultimately deemed technically barred by the state courts is "properly filed" under § 2244(d)(2) 16

III. This Court should grant the writ and review the District Court's and Fifth Circuit's denial of equitable tolling, which denies all federal habeas review to petitioners who act "appropriately", "reasonably" and "diligently", and as demanded by the exhaustion requirement in seeking state court remedies? 19

IV. This Court should grant the writ to resolve the conflict between the Fifth Circuit and the Ninth and Seventh Circuit Courts of Appeals in applying the relation back doctrine in habeas actions under Federal Rules of Civil Procedure 15(c)(2)? 27

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Petitioner, Leonardo Manuel Lopez, respectfully asks that the Court issue its writ of certiorari to review the decision of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is appended as App. 1-2. The Fifth Circuit's October 25, 2004, order denying the petition for rehearing is appended as App. 3. The opinions of the United States District Court for the Southern District of Texas, Houston Division, is appended as App. 4-9. The order of the Texas Court of Criminal Appeals denying Petitioner's state post-conviction application for writ of habeas corpus is appended hereto as App. 10.

STATEMENT OF JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1). The Fifth Circuit denied rehearing on October 25, 2004. Thus, this petition for writ of certiorari is timely filed.

STATUTORY PROVISIONS INVOLVED

This case involves the one year statute of limitations in the

Anti-Terrorism and Effective Death Penalty Act of 1996

("AEDPA"), which state, in pertinent part:

> (1) A l-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. ...
>
> (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

28 U.S.C. § 2244(d)(1)-(2).

Also, this case involves the relation back doctrine set forth under Federal Rules of Civil Procedure 15(c)(2) which reads as follows:

> Rule 15. Amended and Supplemental Pleadings.
>
> (c) Relation Back Amendments.
> An amendment of a pleading relates back to the date of the original pleading when:
>
> (2) the claim or defense asserted in the amended pleading arose out of the conduct or occurrence set forth or attempted to be set forth in the original pleading ....

STATEMENT OF THE CASE

State Court: In 1994, Petitioner entered a no contest plea

to the charge of murder and a State Court Judge placed him on ten (10) years of deferred adjudicated probation. On December 17, 1999, another Judge revoked Petitioner's deferred adjudication probation and sentenced him to thirty-five (35) years confinement. On August 10, 2000, the Texas 14th Court of Appeals affirmed the judgment and sentence on August 10, 2000. **Lopez v. State**, No. 14-00-190-CR. A petition for discretionary review was not filed with the Texas Court of Criminal Appeals.

On April 3, 2001, Petitioner filed a state application for writ of habeas corpus with the district clerk's office to be filed with the trial court as required by Article 11.07 of the Texas Code of Criminal Procedure. That petition was accepted and filed with the trial court on April 5, 2001.

After the State's Assistant District Attorney filed "Respondent's Original Answer" on April 17, 2001, the Clerk of the trial court transmitted the proceedings to the Texas Court of Criminal Appeals.

On March 22, 2002, the Clerk of the Texas Court of

Criminal Appeals sent a letter to the trial court instructing the Court to inform the Petitioner's attorney to conform his pleadings to Rule 73.2 of the Texas Rules of Appellate Procedure a copy of which is hereto attached as App. 11-12.

Upon receipt of the District Clerk's notice, Petitioner prepared and forwarded to the District Clerk on April 22, 2002, a state habeas corpus form complying with the letter notice directing that Petitioner set out on the form the grounds upon which he was seeking habeas relief rather than by reference.

On July 9, 2002, the trial court entered its findings of fact and order directing the record to again be forwarded back to the Texas Court of Criminal Appeals.

On September 19, 2002, the Texas Court of Criminal Appeals entered it's summary order denying, "without written order the application for writ of habeas corpus on the findings of the trial court without a hearing." [App. 10]

Federal District Court: Petitioner filed his federal application for writ of habeas corpus on December 23, 2002, in the

cause styled **Leonardo Manuel Lopez v. Janie Cockrell**, Civil Action No. H-02-4906, raising the identical claims that were summarily denied by the state courts.

On August 13, 2003, Magistrate Marcia A. Crone issued an order directing the Respondent to file a reply addressing the issue as to whether the state application tolled the limitations period until the Texas Court of Criminal Appeals returned it on March 22, 2002, and requiring Respondent to address why equitable tolling should not apply.

After Respondent filed his reply, District Judge David Hittner entered an order on January 12, 2004, dismissing Petitioner's application with prejudice as time barred under 28 U.S.C. § 2244(d). [App. 4-9] The Court reasoned that under the Fifth Circuit's holding in **Villegas v. Johnson**, 184 F.3d 467 (1999), any procedural error in the filing of a state petition for collateral relief precluded an application from being "properly filed" as set forth under this Court's holding in **Artuz v. Bennett**, 531 U.S. 4 (2000), and, therefore, would not toll the period of